

AMENDED IN SENATE AUGUST 28, 2013
AMENDED IN SENATE AUGUST 27, 2013
AMENDED IN SENATE JULY 3, 2013
AMENDED IN SENATE JUNE 20, 2013
AMENDED IN ASSEMBLY MARCH 19, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 640

Introduced by Assembly Member Hall

February 20, 2013

An act to add Section 6720 to the Labor Code, relating to employment, *and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

AB 640, as amended, Hall. Occupational safety and health: adult films.

The California Occupational Safety and Health Act of 1973 establishes certain safety and other responsibilities of employers and employees. Violations of the act under certain circumstances are a crime.

This bill would require an employer engaged in the production of an adult film to adopt prescribed practices and procedures to protect employees from exposure to, and infection by, sexually transmitted diseases, including engineering and work practice controls, an exposure control plan, hepatitis B vaccinations, medical monitoring, and information and training on health and safety. The bill would define terms for those purposes. Because a violation of the act would be a

crime under certain circumstances, the bill would impose a state-mandated local program by creating a new crime.

This bill would provide that its provisions are severable.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~^{2/3}. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6720 is added to the Labor Code, to read:
2 6720. (a) The Legislature finds and declares that the protection
3 of workers in the adult film industry is the responsibility of multiple
4 layers of government, with the department being responsible for
5 worker safety and the county being responsible for protecting the
6 public health. Therefore, this section shall not be construed to
7 prohibit a city, county, or city and county from implementing a
8 local ordinance regulating the adult film industry, provided that
9 nothing in the local ordinance contradicts any provision of this
10 section.
11 (b) For purposes of this section, the following definitions shall
12 apply:
13 (1) "Adult film" means any commercial film, video, multimedia,
14 or other recorded representation during the production of which
15 performers actually engage in sexual intercourse, including oral,
16 vaginal, or anal penetration.
17 (2) "Employee" means a person who is an employee or
18 independent contractor, regardless of whether the person is shown
19 in the adult film, who, during the production of the adult film,
20 performs sexual intercourse, including oral, vaginal, or anal
21 penetration.
22 (3) "Employer" means a company, partnership, corporation, or
23 individual engaged in the production of an adult film. There shall
24 be a rebuttable presumption that the name on the material for
25 commercial distribution is the employer unless there is evidence

1 to the contrary as demonstrated through contractual or employment
2 records.

3 (4) “Sexually transmitted disease” or “STD” means any infection
4 commonly spread by sexual conduct, including, but not limited
5 to, HIV/AIDS, gonorrhea, syphilis, chlamydia, hepatitis, genital
6 human papillomavirus infection, and genital herpes.

7 (c) An employer shall maintain engineering and work practice
8 controls sufficient to protect employees from exposure to blood
9 and any potentially infectious materials, in accordance with Section
10 5193 of Title 8 of the California Code of Regulations. Engineering
11 and work practice controls shall include, but are not limited to, the
12 following:

13 (1) Simulation of sex acts using acting, production, and
14 postproduction techniques.

15 (2) Provision of and required use of condoms and other
16 protective barriers whenever acts of vaginal or anal intercourse
17 are filmed.

18 (3) The provision of condom-safe water-based or silicone-based
19 lubricants to facilitate the use of condoms.

20 (4) Plastic and other disposable materials to clean up sets.

21 (5) Sharps containers for disposal of contaminated sharps,
22 including, but not limited to, any blades, wires, or broken glass.

23 (d) An employer shall maintain an exposure control plan in
24 accordance with Section 5193 of Title 8 of the California Code of
25 Regulations. An employer shall not be required to comply with
26 any provision related to establishing and maintaining a sharps
27 injury log, or any provision regarding regulated waste.

28 (e) An employer shall make available the hepatitis B vaccination
29 and all medical followup required by Section 5193 of Title 8 of
30 the California Code of Regulations, for any employee engaged in
31 the production of adult films, at the employer’s expense.

32 (f) An employer shall designate a custodian of records for
33 purposes of this section. A copy of the original production shall
34 be retained by the custodian of records.

35 (g) An employer shall pay the costs of required medical
36 monitoring, such as STD testing, and keep confidential employee
37 records.

38 (h) (1) An employer shall adopt, implement, maintain, and
39 update, as required, a written health and safety program that meets
40 the requirements of the Injury and Illness Prevention Program and

1 the bloodborne pathogens standard, described, respectively, in
2 Sections 3203 and 5193 of Title 8 of the California Code of
3 Regulations.

4 (2) An employer shall provide a training program in accordance
5 with Section 5193 of Title 8 of the California Code of Regulations.
6 The training requirements of this subdivision may be satisfied by
7 proof that the employee has received appropriate training at another
8 workplace or from an appropriate third party approved by the
9 department in the prior 12 months.

10 (i) This section shall not be construed to require condoms,
11 barriers, or other personal protective equipment to be visible in
12 the final product of an adult film.

13 (j) The Legislature finds and declares that screening for STDs
14 is a critical public health measure and should be employed
15 wherever possible, including the adult film industry. Therefore,
16 this section shall not be construed to impede or replace STD
17 screening of all employees, as defined in paragraph (2) of
18 subdivision (b), pursuant to STD screening protocols established
19 by the federal Centers for Disease Control and Prevention, the
20 State Department of Public Health, and the public health
21 department in the county where the filming occurs.

22 SEC. 2. The provisions of this act are severable. If any
23 provision of this act or its application is held invalid, that invalidity
24 shall not affect other provisions or applications that can be given
25 effect without the invalid provision or application.

26 SEC. 3 No reimbursement is required by this act pursuant to
27 Section 6 of Article XIII B of the California Constitution because
28 the only costs that may be incurred by a local agency or school
29 district will be incurred because this act creates a new crime or
30 infraction, eliminates a crime or infraction, or changes the penalty
31 for a crime or infraction, within the meaning of Section 17556 of
32 the Government Code, or changes the definition of a crime within
33 the meaning of Section 6 of Article XIII B of the California
34 Constitution.

35 SEC. 4. *This act is an urgency statute necessary for the*
36 *immediate preservation of the public peace, health, or safety within*
37 *the meaning of Article IV of the Constitution and shall go into*
38 *immediate effect. The facts constituting the necessity are:*

- 1 *In order to protect workers in the adult film industry from an*
- 2 *imminent threat to public health as soon as possible, it is necessary*
- 3 *that this act take effect immediately.*

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